

BEFORE THE  
SURFACE TRANSPORTATION BOARD



FINANCE DOCKET NO. 35127

CSX TRANSPORTATION, INC.  
- TRACKAGE RIGHTS EXEMPTION -  
CENTRAL RAILROAD OF INDIANAPOLIS  
D/B/A CHICAGO, FORT WAYNE AND EASTERN

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**SURFACE  
TRANSPORTATION BOARD**

VERIFIED NOTICE OF EXEMPTION

Steven C. Armbrust  
CSX Transportation, Inc.  
500 Water Street  
Jacksonville, FL 32202  
(904) 359-1229

John W. Humes, Jr., Esq.  
4135 Lakeside Drive  
Jacksonville, FL 32210  
(904) 388-4883

**FILED**

MAY 01 2008

**SURFACE  
TRANSPORTATION BOARD**

Attorneys for: CSX TRANSPORTATION,  
INC.

Dated: May 1, 2008

ENTERED  
Office of Proceedings

MAY 01 2008

Part of  
Public Record

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SURFACE TRANSPORTATION BOARD**

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**CSX TRANSPORTATION, INC.  
– TRACKAGE RIGHTS EXEMPTION –  
CENTRAL RAILROAD OF INDIANAPOLIS  
D/B/A CHICAGO, FORT WAYNE AND EASTERN**

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**VERIFIED NOTICE OF EXEMPTION**

CSX Transportation, Inc. ("User") submits this Verified Notice of Exemption (this "Notice"), pursuant to 49 C.F.R. § 1180.2(d)(7), for exemption of limited overhead trackage rights over a line of railroad of the Central Railroad of Indianapolis d/b/a Chicago, Fort Wayne and Eastern ("Owner"), between milepost QF 191.28, at the west end of User's Crestline Yard, at Crestline, OH and milepost QFS 62.85 at Spore, OH, via Owner's Ft. Wayne Line Subdivision, a distance of approximately 15 16 miles (the "Line").

The trackage rights are necessary, for economy and efficiency of operation, to permit User's crews to operate its trains in overhead movement between the end points of the Line for the purpose of moving loaded unit trains of crushed limestone from Spore, OH to Crestline, OH and the empty return of the unit trains from Crestline OH to Spore, OH. Subject to notice from User to Owner that User intends to operate at other times or additional trains, the trackage rights are limited to. (i) the months between and including

April through November of each calendar year and (ii) three (3) loaded and three (3) empty unit trains per week, with a maximum of sixty (60) cars per unit train.

Under 49 C.F.R. § 1180.2(d)(7), the acquisition of trackage rights by a rail carrier over lines owned or operated by any other rail carrier or carriers is exempt if the rights are (i) based on written agreements and (ii) not filed or sought in responsive applications in rail consolidation proceedings. The trackage rights covered by this Notice (i) will be covered by the Trackage Rights Agreement and (ii) are not being filed or sought in responsive applications in a rail consolidation proceeding. As such, the § 1180.2(d)(7) exemption is applicable

In accordance with the requirements of 49 C.F.R. § 1180.4(g), User submits the following information:

**§ 1180.6(a)(1)(i) Description of Proposed Transaction**

The transaction covered by this Notice is the acquisition of limited non-exclusive overhead trackage rights (the "Trackage Rights") by User between Crestline, OH, milepost QF 191.28,<sup>1</sup> and Spore, OH, milepost QFS 62.85,<sup>2</sup> a total distance of 15.16 miles approximately. Subject to notice from User to Owner that User intends to operate at other times or additional trains, the Trackage Rights are limited to: (i) the months between and including April through November of each calendar year and (ii) a maximum of three (3) loaded unit trains of crushed limestone and three (3) empty unit

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<sup>1</sup> User and Owner's trackage connects at the West End of User's Crestline Yard. The Line is a portion of the Owner's Ft. Wayne Subdivision.

<sup>2</sup> User will operate along the Ft. Wayne Subdivision until it reaches milepost 200.05 near Bucyrus, OH. At that point, User will enter the Spore Industrial Track, which begins at milepost QFS 69.24. User will traverse the Spore Industrial Track to the end at Spore, milepost QFS 62.85, where the privately owned track of National Lime and Stone ("NLS") begins. Loaded trains from NLS will be operated in the reverse move

trains per week, with a maximum of sixty (60) cars per unit train User will not provide local service over the Line

**The name and business address of the applicant is**

CSX Transportation, Inc.  
500 Water Street  
Jacksonville, Florida 32202

**Questions regarding this transaction are to be addressed to the representatives named below**

John N Booth, III  
CSX Transportation, Inc  
500 Water Street, J-315  
Jacksonville, Florida 32202  
(904) 359-3486  
(904) 359-1373 (fax)

Steven C. Armbrust, Esq.  
CSX Transportation, Inc  
500 Water Street, J-150  
Jacksonville, Florida 32202  
(904) 359-1229  
(904) 245-3357 (fax)

**§ 1180.6(a)(1)(ii) Consummation Date**

The Trackage Rights will be consummated on May 30, 2008, or the date that is 30 days from the date the Board receives this Notice (to the extent such Notice is received after May 1, 2008)

**§1180.6(a)(1)(iii) Purpose of the Transaction**

User's trains will move to and from the end points of the Line in the interests of economy and efficiency, in connection with a transition in User's operations, which transition will be implemented to improve traffic flow by avoiding the time consuming and unnecessary interchange of the loaded and empty unit trains between Owner and User and their respective crews Subject to notice from User to Owner that User intends to operate at other times or additional trains, the Trackage Rights are limited to (i) the months between and including April through November of each calendar year and (ii) a

maximum of three (3) loaded unit trains of crushed limestone and three (3) empty unit trains per week, with a maximum of sixty (60) cars per unit train.

**§ 1180.6(a)(5) States in which the Applicant Operates**

User operates in the states of Alabama, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia, and the District of Columbia. The involved trackage rights are located solely in the State of Ohio.

**§ 1180.6(a)(6) Map (Exhibit I)**

A map is attached as Exhibit I.

**§ 1180.6(a)(7)(ii) Agreement (Exhibit 2)**

A redacted executed copy of the Trackage Rights Agreement showing the principal terms is attached as Exhibit II. An unredacted version of the Trackage Rights Agreement is being filed under seal concurrently with this Notice and a Motion for Protective Order.

**§ 1180.4(g)(1)(I) Labor Protection**

User is agreeable to the labor protection conditions generally imposed in trackage rights proceedings as found in Norfolk and Western Ry. Co. - Trackage Rights - BN, 354 I.C.C. 605 (1978), as modified by Mendocino Coast R. Inc. -- Lease and Operate, 360 I.C.C. 653 (1980).

**§ 1180.4(a)(2)(i) Caption Summary (Exhibit 3)**

A caption summary of this transaction suitable for publication in the *Federal Register* is attached as Exhibit III

**§ 1180.4(g)(3) Environmental Documentation**

Environmental documentation is not required for this transaction. See 49 C F R. § 1105.6(c)(4) (no environmental documentation required for common use of rail terminals and trackage rights)

Respectfully submitted,

CSX TRANSPORTATION, INC.

By. 

Steven C Armbrust, Esq.  
CSX Transportation, Inc.  
500 Water Street  
Jacksonville, Florida 32202  
(904) 359-1229

John W Humes, Jr.  
4135 Lakeside Dr.  
Jacksonville, FL 32210  
(904) 388-4883

Attorneys for: CSX  
TRANSPORTATION, INC.

**VERIFICATION**

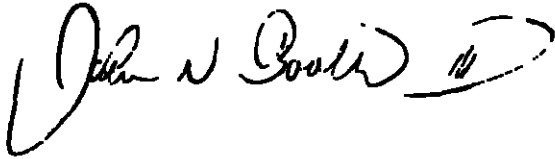
**[PLEASE SEE ATTACHED]**



**VERIFICATION**

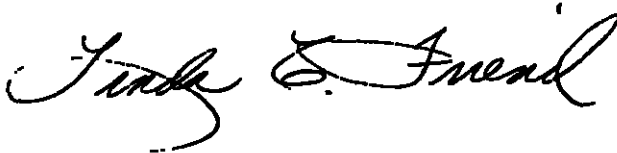
John N Booth, III, being duly sworn, depose and state that I am the Director of Joint Facilities of CSX Transportation, Inc , that I am authorized to make this verification, and that I have read the foregoing Notice of Exemption in Finance Docket No 35127 and know the facts stated herein, and that said facts are true as stated to the best of my knowledge, information and belief

Dated April 7, 2008



SWORN TO BEFORE ME this  
7<sup>th</sup> day of APRIL, 2008

NOTARY PUBLIC



**CERTIFICATE OF SERVICE**

I certify that I have this day served a copy of the foregoing document upon the following by first class United States mail.

Louis E. Gitomer  
600 Baltimore Avenue  
Suite 301  
Towson, MD 21204

Ohio Department of Transportation  
1980 W. Broad St.  
Columbus, Ohio 43223

Secretary of Transportation  
Office of Chief Counsel  
Federal Railroad Administration  
Docket Clerk  
1120 Vermont Avenue NW  
Washington, D.C 20005

Hon Michael B. Mukasey  
U S Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

Federal Trade Commission  
Premerger Notification Office  
600 Pennsylvania Avenue NW  
Room 303  
Washington, D C 20580

Ohio Rail Development Commission  
50 W. Broad St.  
Suite 1510  
Columbus, Ohio 43215

Governor Strickland  
Governor's Office  
Riffe Center, 30th Floor  
77 South High Street  
Columbus, OH 43215-6108

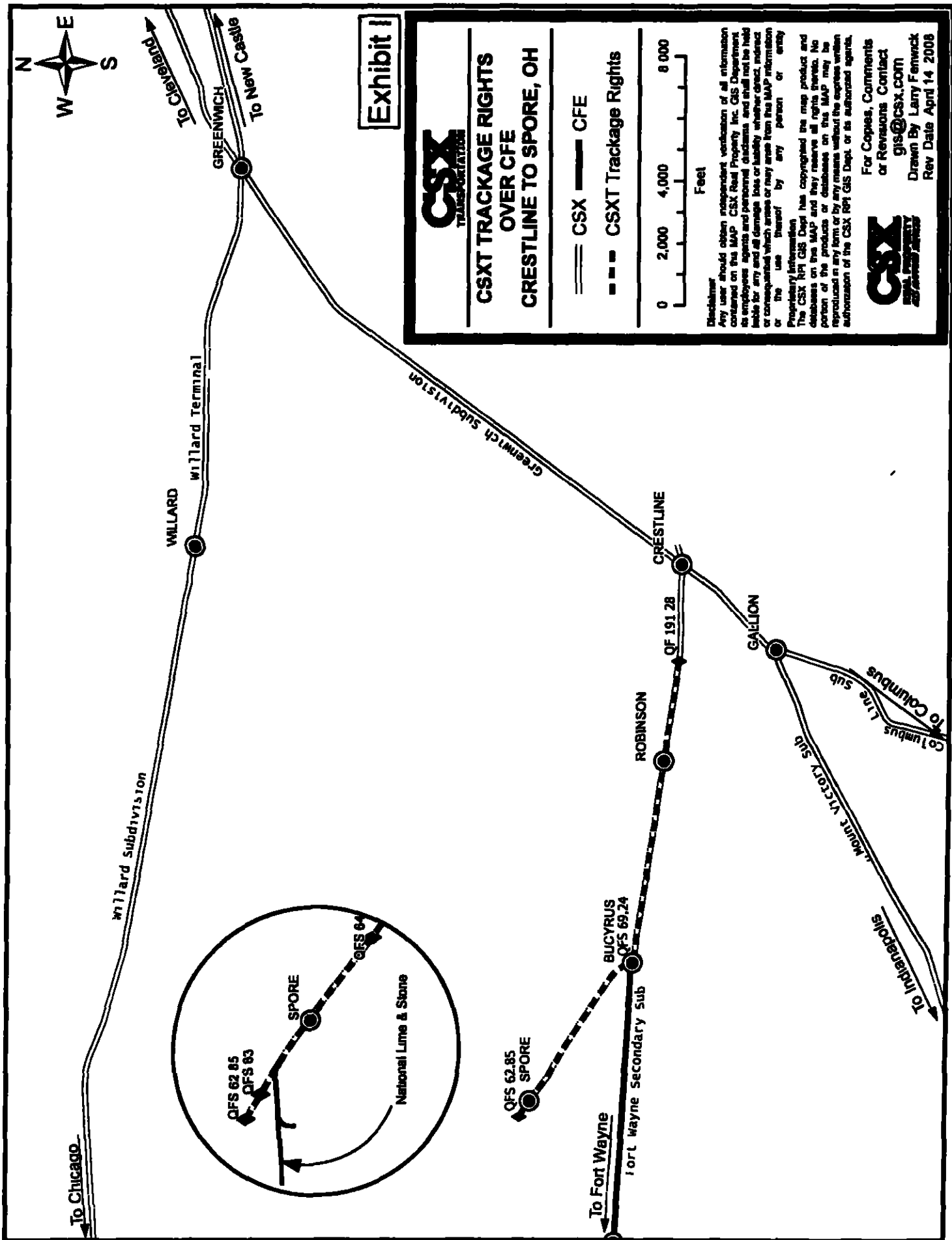
Steven C. Armbrust



May 1, 2008

**EXHIBIT I**

**[Please see attached]**



**EXHIBIT II**

**[Please see attached]**

**TRACKAGE RIGHTS AGREEMENT**  
**Between**  
**CENTRAL RAILROAD OF INDIANAPOLIS**  
**D/b/a CHICAGO, FORT WAYNE AND EASTERN**  
**and**  
**CSX TRANSPORTATION, INC.**

**THIS AGREEMENT**, entered into as of this 4 day of April, 2008, between Central Railroad of Indianapolis, d/b/a Chicago, Fort Wayne and Eastern, an Indiana corporation, (CFE); and CSX Transportation, Inc., a Virginia corporation, (CSXT).

**WHEREAS**, CFE and CSXT (the Parties) entered into a Land and Track Lease Agreement dated July 26, 2004 (Lease) whereby CFE leases the certain properties from CSXT (the Line):

- From m.p. QF 191.28 (excluding Crestline Yard) at or near Crestline station to m.p. QF 441.71 at or near Tolleston station (Fort Wayne Corridor),
- From m.p. QFD 86.57 to m.p. QFD 70 38 (Decatur Secondary, and
- From m.p. QFS 69.24 to m.p. QFS 62 85 (Spore Industrial Track).

**WHEREAS**, pursuant to the Lease, the Parties entered into Addendum to Master Equipment Run-Through Agreement dated July 30, 2004 (Addendum), which provides that CFE will serve and operate loaded and empty unit aggregates trains using CSXT owned or leased locomotives and telemetry devices between Spore, Ohio and Crestline, Ohio (Unit Rock Trains), ; and

**WHEREAS**, for economy and efficiency of operations, CSXT desires to provide service for movement of Unit Rock Trains The Addendum will be suspended on the effective date that CSX begins providing Unit Rock Trains service If the Parties reinstitute the Addendum, the Parties will negotiate rates and provisions comparable with market conditions at the time of reinstitution of the Addendum.

**WHEREAS**, the Parties desire to enter into a formal Trackage Rights Agreement to allow CSXT's movement between Crestline and Spore.

**NOW, THEREFORE**, CFE and CSXT, intending to be legally bound, agree as follows

**ARTICLE 1. GRANT OF TRACKAGE RIGHTS**

Subject to the terms and conditions herein provided, CFE hereby grants to CSXT the right to operate its trains (locomotives or cars) with its own crews (hereinafter referred to as the Trackage Rights) over the following segments of CFE's railroad:

Over CFE's mainline between Crestline, Ohio (mp QF 191.28) and Colson (mp 200 05), the connection to Spore Industrial Track and over the Spore Industrial Track between mp QFS 69 24 and mp QFS 62.85 (the Subject Trackage ) to facilitate service to the rock quarry located at Spore, Ohio (a total distance of 15.16 miles). The grant of Trackage Rights to CSXT will be limited to handling of loaded Unit Rock Trains originating and empty Unit Rock Trains terminating at Spore and moving via Crestline, Ohio.

CSXT's use of the Subject Trackage shall be in common with CFE and any other user of the Subject Trackage, and CFE's right to use the Subject Trackage shall not be diminished by this Agreement. Pursuant to the Lease, CFE shall not have the right to grant to other persons rights of any nature over the Line.

Except as may otherwise be provided by the Trackage Rights, CSXT shall not use any part of the Subject Trackage for the purpose of switching, storage or servicing cars or the making or breaking up of trains, except that nothing contained herein shall, upon prior approval of CFE, preclude the emergency use by CSXT of such auxiliary tracks as may be designated by CFE for such purposes.

CFE shall have exclusive control of the management and operation of the Subject Trackage. CSXT shall not have any claim against CFE for liability account of loss or damage of any kind in the event the use of the Subject Trackage by CSXT is interrupted or delayed at any time from any cause.

CSXT's entry to and exit from the Subject Trackage shall be governed by the instructions of Norfolk Southern Railway's (NS) dispatcher. CFE shall assist CSXT as may be required from time to time during the term hereof in obtaining the cooperation of NS's dispatcher.

### **ARTICLE 3. RESTRICTION ON USE**

The Trackage Rights herein granted are granted for the sole purpose of CSXT using same for bridging Unit Rock Trains (STCC 14 219 65) originating at National Lime and Stone at Spore destined to CSXT served points via Crestline, OH CSXT shall not perform any local freight service whatsoever at any point located on the Subject Trackage

From Crestline to Spore, CSXT shall operate only unit empty hopper trains destined National Lime and Stone for loading of the aforesaid crushed limestone.

It is the intent of CSXT to normally operate three (3) loaded and three (3) empty

trains of sixty (60) cars each plus one locomotive (equals two cars) and one EOT per trip (63 cars \* 2 round trips \* 3 per week \* 4 weeks = 1,512 total cars per month) per week during the April-November construction season in each calendar year. The parties recognize that the construction season could extend beyond the April to November timeframe. If CSXT desires to run Unit Rock Trains beyond the April-November timeframe, CSXT will provide CFE written notice 24 hours in advance of Unit Rock Train(s) movements for the month in which they wish to operate. Notice will include anticipated number of Unit Rock Train(s) and dates to be handled in each month. Each year, no later than December 15th, CSXT will provide CFE General Manager with monthly schedules and expected annual volumes for the coming year. In the event during the term hereof, CSXT anticipates volume in excess of the aforesaid number of trains or cars, CSXT shall so advise CFE in advance of the projected increase, and the Parties shall be governed by the provisions of Article 5B.

#### **ARTICLE 4. MISCELLANEOUS SPECIAL PROVISIONS**

- A. When operating over the Subject Trackage, CSXT's locomotives and crews shall be equipped to communicate with CFE and NS on radio frequencies normally used by CFE and NS in directing train movements on the Subject Trackage
- B. Procedures for qualification and occupancy of the Subject Trackage shall be arranged by the local supervision of each carrier. All control and usage shall be subject to the approval of CFE's representative or his designee

#### **ARTICLE 5. COMPENSATION**

CSXT shall pay CFE monthly in advance, during the months of April through November in each calendar year, a minimum of [REDACTED] per month, hereinafter referred to as the Current Charge. Said Current Charge reflects the monthly movement of approximately 1,512 cars per Article 3 a distance of 15.1 miles, at a Per Car Mile Charge of [REDACTED]. The previous calculation equals [REDACTED] per month, however, it has been agreed to round up to [REDACTED] per month.

- A. The Per Car Mile Charge, will be revised annually on April 1 of each calendar year in accordance with Article 6.
- B. In addition to the annual projection to be provided by CSXT on December 15 as specified in Article 3 above, CSXT shall furnish CFE, by December 15th each calendar year, a statement of the number of locomotive units and loaded and empty cars operated over the Subject Trackage for the current calendar year. If Unit Rock Trains move in December of the calendar year, CSXT will furnish December's statement no later than January 15<sup>th</sup> of the following calendar year. Based on this statement, CFE shall once annually, or twice if Unit Rock Trains move in months other than April through November, true up actual counts relative



to payments received, and invoice User for any additional compensation due CFE. The Current Charge shall be restated each April 1 for the succeeding one year term, to reflect the average monthly number of cars moved by CSXT in the year immediately preceding, based upon the monthly statements furnished by CSXT. The Current Charge, however, shall not fall below the minimum [REDACTED] per month. If CSXT does not operate a Unit Rock Train(s) in any given month, CSXT is not required to pay the [REDACTED] monthly fee.

Annual statements will be submitted to:

Sarah Causely, Revenue Specialist  
RailAmerica, Transportation Logistics Center – Midwest  
101 Enterprise Dr  
Vassar, MI 48768  
Email [Midwest-AR@railamerica.com](mailto:Midwest-AR@railamerica.com)

- C. User shall furnish CFE information concerning all loaded and empty cars in Electronic Data Interchange (EDI) transmission between the carriers. The procedure shall be required at the time the Association of American Railroads (AAR) defines the standard reporting procedures for trackage rights carriers. The carriers shall determine the minimal data requirements.

#### **ARTICLE 6. REVISION OF PER CAR MILE CHARGE**

- A. The Per Car Mile Charge shall be subject to change to reflect any increases or decreases in labor, material and other costs as hereinafter provided.
- B. The Per Car Mile Charge shall be revised upward or downward each year, beginning with the bill rendered for the month of April, 2009 to compensate for the increase or decrease in the cost of labor and material, excluding fuel, as reflected in the Annual Indexes of Charge-Out Prices and Wage Rates (1977=100), included in "AAR Railroad Cost Indexes" and supplements thereto, issued by the Association of American Railroads (hereinafter referred to as "AAR"). In making such determination, the final "Material prices, wage rates and supplements combined (excluding fuel)" indexes for the East District shall be used. The Per Car Mile Charge shall be revised by calculating the percent of increase or decrease in the index of the latest calendar year (2008 Index for the first annual adjustment) as related to the index for the previous calendar year (2007 Index for the first annual adjustment) and applying that percent to the Per Car Mile Charge.
- C. By way of example, assuming "A" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for 2007, "B" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for 2008, "C" to be the Per Car Mile Charge; and "D" to be the percent of increase or decrease, the revised Per Car Mile Charge stated herein would be revised by the following formula:

$$(1) \frac{B - A}{A} = D$$

$$(2) (D \times C) + C = \text{revised Per Car Mile Charge rounded to the third decimal place, effective April 1 of the year being revised}$$

- D In the event the base for the Annual Indexes of Charge-Out Prices and Wage Rates issued by the AAR shall be changed from the year 1977, appropriate revision shall be made. If the AAR or any successor organization discontinues publication of the Annual Indexes of Charge-Out Prices and Wage Rates, an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the parties hereto. In the absence of agreement, the parties shall submit the matter to binding arbitration as provided hereinafter.
- E. At the option of either party hereto, the compensation provided for in this Agreement shall be open for renegotiation every five (5) years from the Commencement Date, as hereinafter defined. In the event the parties fail to reach agreement upon such renegotiation, such failure shall not constitute a breach of this Agreement, and the parties shall continue to be bound by the terms of compensation provided in this Agreement until the matter is settled or submitted to binding arbitration.

#### **ARTICLE 7. PAYMENT OF BILLS**

- A All payments called for under this Agreement shall be made by CSXT within thirty (30) days after receipt of bills therefore. No payments shall be withheld because of any dispute as to the correctness of items in the bills rendered, and any discrepancies reconciled between the parties hereto shall be adjusted in the accounts of a subsequent month. The records of each party hereto, insofar as they pertain to matters covered by this Agreement, shall be open at all reasonable times to inspection by the other party for a period of two (2) years from the date of billing.
- B. Bills rendered pursuant to the provisions of this Agreement, other than those set forth in Article 5, shall include direct labor and material costs, together with the surcharges, overhead percentages and equipment rentals as specified by CFE at the time any work is performed by CFE for CSXT.

#### **ARTICLE 8. MAINTENANCE OF SUBJECT TRACKAGE**

- A CFE shall maintain, repair and renew the Subject Trackage with its own supervision and labor. CFE shall keep and maintain the Subject Trackage in

reasonably good condition for the use herein contemplated, but CFE does not guarantee the condition of the Subject Trackage or that operations thereover shall not be interrupted. CFE shall take all reasonable steps to ensure that any interruptions shall be kept to a minimum. Furthermore, except as may be otherwise provided in Article 14, CSXT shall not by reason of failure or neglect on the part of CFE to maintain, repair or renew the Subject Trackage, have or make any claim or demand against CFE or its parent corporation, subsidiaries or affiliates, or their respective directors, officers, agents or employees for any injury to or death of any person or persons whomsoever, or for any damage to or loss or destruction of any property whatsoever, or for any damages of any nature suffered by CSXT resulting from any such failure or neglect.

- B. CFE shall perform, at the expense of CSXT, such additional maintenance as CSXT may reasonably require or request
- C. Bills rendered pursuant to the provisions of the Trackage Rights, other than those set forth in Article 5, shall include direct labor and material costs, together with the surcharges, overhead percentages and equipment rentals as specified by CFE at the time any work is performed by CFE for CSXT.

#### **ARTICLE 9. CONSTRUCTION AND MAINTENANCE OF NEW CONNECTIONS**

- A. Existing connections or facilities that are jointly used by the parties hereto shall continue to be maintained, repaired and renewed by and at the expense of the party or parties responsible for such maintenance, repair and renewal under such agreements.
- B. Any additional connections to the Subject Trackage which may be required shall be subject to the CFE's approval (including design) and shall be constructed, maintained, repaired and renewed as follows.
  - (i) CSXT or others shall furnish all labor and material and shall construct, maintain, repair and renew at its sole cost and expense such portions of the tracks located on the right-of-way of CSXT or others which connect the respective lines of the parties hereto.
  - (ii) CFE shall furnish all labor and material and shall construct, maintain, repair and renew at the sole cost and expense of CSXT such portions of the additional tracks located on the right-of-way of CFE which connect the respective lines of the parties hereto. Upon termination of this Agreement, CFE may at its option remove the portion of such trackage and appurtenances as may be located on property of CFE, at the sole cost and expense of CSXT. The salvage material removed shall be released to

CSXT or, as otherwise agreed upon, CFE shall credit CSXT the current fair market value for said salvage.

**ARTICLE 10.        ADDITIONS, RETIREMENTS AND ALTERATIONS**

- A. CFE, from time to time and at its sole cost and expense per provisions of the Lease, may make changes in, additions and betterments to or retirements from the Subject Trackage as shall, in its judgment, be necessary or desirable for the economical or safe operation thereof or as shall be required by any law, rule, regulation, or ordinance promulgated by any governmental body having jurisdiction. Such additions and betterments shall become a part of the Subject Trackage and such retirements shall be excluded from the Subject Trackage .
- B. If the parties agree that changes in or additions and betterments to the Subject Trackage, including changes in communication or signal facilities, are required to accommodate CSXT's operations beyond that required by CFE to accommodate its operations, CFE shall construct the additional or altered facilities and CSXT shall pay to CFE the cost thereof, including the annual expense of maintaining, repairing and renewing such additional or altered facilities

**ARTICLE 11.        MANAGEMENT AND OPERATIONS**

- A. CSXT shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Act, as amended, and any other federal and state and local laws, regulations and rules respecting the operation, condition, inspection and safety of its trains (locomotives and cars) while such trains, locomotives, cars, and equipment are being operated over the Subject Trackage . CSXT shall indemnify, protect, defend, and save harmless CFE and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against all fines, penalties and liabilities imposed upon CFE or its parent corporation, subsidiaries or affiliates, or their respective directors, officers, agents and employees under such laws, rules, and regulations by any public authority or court having jurisdiction in the premises, when attributable solely to the failure of CSXT to comply with its obligations in this regard
- B. CSXT in its use of the Subject Trackage shall comply in all respects with the safety rules, operating rules and other regulations of CFE, and the movement of CSXT's trains (locomotives and cars,) over the Subject Trackage shall at all times be subject to the orders of the transportation officers of CFE. CSXT's trains shall not include locomotives or cars which exceed the width, height, weight or other restrictions or capacities of the Subject Trackage as published in Railway Line Clearances, and no train shall contain locomotives or cars which require speed restrictions or other movement restrictions below the maximum authorized freight speeds as provided by CFE's operating rules and regulations without the prior

consent of CFE.

- C. CSXT shall make such arrangements with CFE as may be required to have all of its employees who shall operate its trains, locomotives and cars over the Subject Trackage qualified for operation thereover, and CSXT shall pay to CFE, upon receipt of bills therefore, any cost incurred by CFE in connection with the qualification of such employees of CSXT, as well as the cost of pilots furnished by CFE, until such time as such employees are deemed by the appropriate examining officer of CFE to be properly qualified for operation as herein contemplated.
- D. CFE may conduct an investigation at its option if a CSXT's employee working on CFE's property is alleged to have violated CFE's safety rules, operating rules, regulations, orders, practices or instructions, or if an incident occurs which requires an investigation under applicable agreement rules. To exercise its option, CFE shall schedule the investigation and notify CSXT's local Transportation Officer in the territory thereof, who shall, in turn, arrange to issue proper notice to the CSXT's employee(s) of the investigation. CFE's scheduling of the investigation must comply with the time limits provided in the applicable agreement on CSXT's railroad. CFE shall provide its regulations, supplements, and safety rules to CSXT at no cost.
- E. If CFE conducts an investigation, CFE shall have the right to exclude from the Subject Trackage any employee of CSXT except officers, determined by CFE, as the result of CFE's investigation or hearing described below, to be in violation of CFE's rules, regulations, orders, practices or instructions.
- F. In a major offense, such as violation of Rule "G", dishonesty, insubordination, or a serious violation of operating rules, wherein CFE desires to bar CSXT's employee from service on CFE's territory pending an investigation by CFE, immediate verbal notification shall be given to the appropriate Transportation Officer of CSXT so that proper written notice can be issued to the employee.
- G. If CFE conducts an investigation, its officer shall conduct the investigation, but an officer of CSXT shall be present to assure compliance with CSXT's labor agreement and practices with respect to investigation procedures. After the investigation is concluded, CFE shall promptly furnish CSXT with two copies of the transcript and a recommendation as to the discipline to be assessed. CSXT's Transportation Officer shall arrange to assess discipline, subject to receipt of CFE's recommended discipline, within the applicable time limits. If CFE recommends dismissal, CSXT reserves the right to change the recommendation to the extent of barring the individual from operating over CFE's territory.
- H. It is understood that CFE shall reimburse CSXT for all payments that CSXT might be required to make as a result of a challenge being made by the employee or his representative as to the discipline recommended by CFE and assessed by

CSXT CSXT agrees to notify CFE before committing itself to making payment of any claim. In the event a claim is progressed to an Adjustment Board, CFE shall be given an opportunity to review CSXT's submission. Any payments made to employees, as a result of an investigation being "overturned", shall include not only actual wages, but in addition, shall include expenses which CSXT may be required to pay covering vacation allowances, Railroad Retirement taxes, unemployment insurance taxes and any other payroll tax or fringe benefits.

- I The trains, locomotives, cars and equipment of CSXT, CFE, and any other present or future user of the Subject Trackage or any portion thereof, shall be operated without prejudice or partiality to either party and in such manner as shall afford the most economical and efficient manner of movement of all traffic.
- J In the event that a train of CSXT shall be forced to stop on Subject Trackage , and such stoppage is due to insufficient hours of service remaining among CSXT's crew, or due to mechanical failure of CSXT's equipment, or any other cause not resulting from an accident or derailment, and such train is unable to proceed, or if a train of CSXT fails to maintain the speed required by CFE on the Subject Trackage , or if in emergencies, crippled or otherwise defective cars are set out of CSXT's trains on the Subject Trackage , CFE shall have the option to furnish motive power or such other assistance (including but not limited to the right to recrew CSXT's train) as may be necessary to haul, help or push such trains, locomotives or cars, or to properly move the disabled equipment off the Subject Trackage , and CSXT shall reimburse CFE for the cost of rendering any such assistance
- K If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars in order to move them off the Subject Trackage, such work shall be done by CSXT under the direction of CFE, and CSXT shall reimburse CFE for the cost thereof.
- L In the event CFE and CSXT agree that CFE should retain employees or provide additional employees for the sole benefit of CSXT, the parties hereto shall enter into a separate agreement under which CSXT shall bear all cost and expense for any such retained or additional employees provided, including without limitation all cost and expense associated with labor protective payments which are made by CFE and which would not have been incurred had the retained or additional employees not been provided.

## **ARTICLE 12. MILEAGE AND CAR HIRE**

All mileage and car hire charges accruing on cars in CSXT's trains on the Subject Trackage shall be assumed by CSXT and reported and paid by it directly to the owner of such cars

### **ARTICLE 13. CLEARING OF WRECKS**

Whenever CSXT's use of the Subject Trackage requires rerailling, wrecking service or wrecking train service, CSXT shall perform or provide such service under the direction and with the permission of CFE, including the repair and restoration of roadbed, track and structures. The cost, liability and expense of the foregoing, including without limitation loss of, damage to, or destruction of any property whatsoever and injury to and death of any person or persons whomsoever or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, resulting there from, shall be apportioned in accordance with the provisions of Article 14 hereof. All locomotives, cars, and equipment and salvage from the same so picked up and removed which are owned by or under the management and control of or used by CSXT at the time of such wreck, shall be promptly delivered to it.

### **ARTICLE 14. LIABILITY**

The responsibility and liability between the parties for. (i) any personal injury or death of any person (including employees of the parties and third persons), (ii) any real or personal property damage of any person (including property of the parties and third persons), (iii) any damage or destruction to the environment (including land, air, water, wildlife and vegetation), and (iv) all cleanup and remedial expenses, court costs, settlements, claims, judgments, litigation expenses and attorney's fees resulting from the use of the Subject Trackage by either party as described herein, all of which are collectively referred to as a "Loss", shall be divided as follows

- A If a Loss occurs involving the trains, locomotives, engines and/or employees of only one of the parties, then the involved party should be solely responsible for the Loss, even if caused partially or completely by the other party.
- B If a Loss occurs on the Subject Trackage involving the trains and locomotives of both CFE and CSXT, then: (i) each is solely responsible for any Loss to its own employees, locomotives and equipment in its own account including lading and (ii) the parties are equally responsible for any Loss to the Subject Trackage and Loss sustained by third parties, regardless of the proportionate responsibility between them as to the cause of the Loss
- C For purposes of assigning responsibility of a Loss under this Article as between the parties hereto, a Loss involving one of the parties to this Agreement and a third party or parties shall be construed as being the sole responsibility of that one party to this Agreement
- D Whenever any liability, cost, or expense is assumed by or apportioned to a party hereto under the foregoing provisions, that party shall forever protect, defend, indemnify, and save harmless the other party to this Agreement and its parent corporation, subsidiaries and affiliates, and all of their respective directors,

officers, agents, and employees from and against that liability, cost and expense assumed by that party or apportioned to it, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance, or misfeasance of the indemnitee or its directors, officers agents, or employees.

- E. In every case of death or injury suffered by an employee of either CSXT or CFE, when compensation to such employees or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employers' liability or other law, and either of said parties, under the provisions of this Agreement, is required to pay said compensation, if such compensation is required to be paid in installments over a period of time, such party shall not be released from paying any such future installments by reason of the expiration or other termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid
- F. For purposes of determining liability, pilots furnished by CFE to CSXT pursuant to this Agreement shall be considered as the employees of CSXT while such employees are on duty as pilots
- G. For the purpose of determining liability associated with construction, maintenance, repair and renewal of connections as provided in Article 9 B (11), all work performed by CFE shall be deemed performed for the sole benefit of CSXT and, CSXT shall be fully liable for all cost and expense of any and all loss, damage, destruction, injury and death resulting from, arising out of, incidental to or occurring in connection with said construction, maintenance repair and renewal except when such cost and expense of loss, damage, destruction, injury or death is caused by the sole negligence of CFE CSXT shall protect, indemnify, and save harmless CFE and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against any and all expense and liability for which CSXT is responsible.
- H. If any suit or action shall be brought against either party for damages which under the provisions of this Agreement are in whole or in part the responsibility of the other party, said other party shall be notified in writing by the party sued, and the party so notified shall have the right and be obligated to take part in the defense of such suit and shall pay a proportionate part of the judgment and costs, expense and attorneys' fees incurred in such suit according to its liability assumed hereunder.
- I. In the event of a Loss as set out herein, the parties to this Agreement shall be bound by the Freight Claim Rules, Principles, and Practices of the Association of American Railroads (AAR) as to the handling of any claims for the loss of or damage to lading
- J. Notwithstanding any and all of the forgoing provisions of this article, in the event a Loss occurs while the Subject Trackage is being used by CFE and/or CSXT,



and such Loss is attributable solely to acts or omissions of any of its employees while under the influence of drugs or alcohol then the party shall be solely responsible for such Loss.

#### **ARTICLE 15. CLAIMS**

- A. Except as provided in Subarticle B below, all claims, injuries, death, and property damages and losses arising out of or connected with this Agreement shall be investigated, adjusted and defended by the party bearing the liability, cost, and expense therefore under the provisions of this Agreement**
- B Each party shall investigate, adjust and defend all freight loss and damage claims filed with it in accordance with 49 U.S.C Section 11706.**
- C. In the event a claim or suit is asserted against CFE or CSXT which is the other's duty hereunder to investigate, adjust or defend, then, unless otherwise agreed, such other party shall, upon request, take over the investigation, adjustment and defense of such claim or suit.**
- D. All costs and expenses in connection with the investigation, adjustment and defense of any claim or suit under this Agreement shall be included as costs and expenses in applying the liability provisions set forth in this Agreement, except that salaries or wages of full-time agents, full-time attorneys and other full-time employees of either party engaged directly or indirectly in such work shall be borne by such party**
- E. Excluding freight loss and damage claims filed in accordance with 49 U.S.C. Section 11706, neither party shall settle or compromise any claim, demand, suit or cause of action for which the other party has any liability under this Agreement without the concurrence of such other party if the consideration for such settlement or compromise exceeds THIRTY-FIVE THOUSAND DOLLARS (\$35,000)**
- F. Each party agrees to indemnify and hold harmless the other party and its parent corporation, subsidiaries and affiliates, and all their respective directors, officers, agents and employees from and against any and all costs and payments, including benefits, allowances and arbitration, administrative and litigation expenses, arising out of claims or grievances made by or on behalf of its own employees, either pursuant to a collective bargaining agreement or employee protective conditions imposed by a governmental agency upon the agency's approval or exemption of this Agreement. It is the intention of the parties that each party shall bear the full costs of protection of its own employees under employee protective conditions which may be imposed, and of grievances filed by its own employee arising under its collective bargaining agreements with its employees**

- G. It is understood that nothing in this Article 15 shall modify or waive the conditions, obligations, assumptions or apportionments provided in Article 14

#### **ARTICLE 16. INSURANCE**

During the term hereof, CFE shall carry insurance in the amounts and types specified in Section 31 of the Lease.

#### **ARTICLE 17. DEFAULT AND TERMINATION**

In the event of any substantial failure on the part of CSXT to perform its obligations under this Agreement and its continuance in such default for a period of sixty (60) days after written notice thereof by certified mail from CFE, CFE shall have the right at its option, after first giving thirty (30) days written notice thereof by certified mail, and notwithstanding any waiver by CFE of any prior breach thereof, to terminate the Trackage Rights and CSXT's use of the Subject Trackage, subject to any regulatory approval or exemption that may be required under governing law. The exercise of such right by CFE shall not impair its rights under this Agreement or any cause or causes of action it may have against CSXT for the recovery of damages

#### **ARTICLE 18. REGULATORY APPROVAL**

- A. Should the Trackage Rights require the prior approval of the Surface Transportation Board (STB), CSXT at its own cost and expense shall initiate and thereafter diligently pursue an appropriate application or petition to secure such approval. CFE shall assist and support efforts of CSXT to secure any necessary STB approval of this Agreement.
- B. Should the STB at any time during the term of this Agreement impose any labor protective conditions upon the exemption of this Agreement from regulation, CSXT, solely, shall be responsible for any and all payments in satisfaction of such conditions.

#### **ARTICLE 19. ABANDONMENT OF SUBJECT TRACKAGE**

Notwithstanding the provisions of Article 20, CFE, pursuant to the Lease, may discontinue service over the Subject Trackage during the term of this Agreement or any renewals thereof, upon giving CSXT not less than ninety (90) days' notice of CFE's intent to discontinue service. In the event regulatory authority is required to effect such discontinuance, CSXT shall not interfere with CFE's actions to seek and to exercise such authority as long as CFE's actions are in keeping with the Lease. In the event regulatory

authority is required for CSXT to discontinue its own operations over the Subject Trackage, CSXT shall seek and exercise such regulatory authority at the same time that CFE seeks regulatory authority to abandon the Subject Trackage. CFE and CSXT shall exercise the discontinuance and abandonment authority within thirty (30) days from the date CFE and CSXT obtain the aforementioned regulatory authority. Upon the date established by CFE for discontinuance of the Subject Trackage by its aforesaid notice to CSXT or upon the above specified date of exercise of the regulatory authority to discontinue operations, whichever is later, this Agreement shall terminate and be of no further force and effect, except that termination of this Agreement shall not relieve or release either party hereto from any obligations assumed or from any liability which may have arisen or been incurred prior to said termination. The foregoing provisions shall govern the parties hereto notwithstanding the provisions of 49 U.S.C. Section 10904 or any other provisions of law. As used herein, Subject Trackage means the entire Subject Trackage or any portion or portions thereof.

Except as otherwise expressly agreed in writing, in the event any actions taken by the parties under this Article 18 result in an obligation imposed by any competent authority on either or both parties hereto to protect the interests of affected employees, the responsibility for bearing the cost thereof shall be borne by the party which is the employer of the affected employee or employees, notwithstanding the manner in which said cost may be apportioned in any order or decision imposing the protection.

#### **ARTICLE 20. TERM**

- A. This Agreement shall be effective the day and year first above written and shall remain in effect concurrent with the terms of the Lease and shall terminate either concurrent with the termination of the Lease, or at such time during the term of the Lease when CSXT for any consecutive six-month period, ceases to haul crushed limestone originating at the facilities of National Lime and Stone. In such latter event CSXT will provide CFE with a minimum of thirty (30) days advance written notice of the pending conclusion of the six month period of cessation of movement.
- B. Termination of this Agreement shall not relieve or release either party hereto from any obligation assumed or from any liability which may have arisen or been incurred by either party under the terms of this Agreement prior to the termination hereof.

#### **ARTICLE 21 FORCE MAJEURE**

CFE shall not be responsible to CSXT for delays or failure to perform under this Agreement if such delays or failure to perform are covered by circumstances beyond its control, including, but not limited to, Acts of God, floods, storms, earthquakes, hurricanes, tornadoes, or other severe weather or climatic conditions, acts of public enemy, war, blockade, insurrection, actual or threatened acts of terrorism, vandalism or

sabotage, fire, accident, wreck, derailment, washout or explosion, strike, lockout or labor disputes experienced by the parties hereto, embargoes or AAR service orders; Federal Railroad Administration (FRA) orders, or governmental laws, orders or regulations.

## **ARTICLE 22. ARBITRATION**

Any irreconcilable dispute arising between the parties with respect to this Agreement shall be jointly submitted for binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator shall be final and conclusive upon the parties hereto. Each party to the arbitration shall pay the compensations, costs, fees and expenses of its own witnesses, experts and counsel. The compensation, costs and expense of the arbitrator, if any, shall be borne equally by the parties hereto. The arbitrator shall not have the power to award consequential or punitive damages or to determine violations of criminal or antitrust laws.

## **ARTICLE 23 SUCCESSORS AND ASSIGNS**

This Agreement shall inure to the benefit of and be binding upon the successors and assigns, by merger or otherwise, of the parties hereto. Neither party hereto shall transfer or assign this Agreement, or any of its rights, interests or obligations hereunder, to any person, firm, or corporation without obtaining the prior written consent of the other party to this Agreement.

## **ARTICLE 24 NOTICE**

Any notice required or permitted to be given by one party to the other under this Agreement shall be deemed given on the date sent by certified mail, or by such other means as the parties may agree, and shall be addressed as follows:

<b>If to CSXT:</b>	<b>AVP Passenger &amp; Joint Facility Contracts CSX Transportation, Inc 500 Water St., J315 Jacksonville, FL 32202</b>
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<b>If to CFE:</b>	<b>General Manager CFE 3010 East Pontiac St Ft Wayne, IN 46803 And VP-General Counsel Rail America, Inc 5300 Broken Sound Blvd , NW Boca Raton, FL 33487</b>
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Either party may provide changes in the above addresses to the other party by personal service or U.S. mail.

**ARTICLE 25.        GENERAL PROVISIONS**

- A     This Agreement and each and every provision hereof is for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right of any third party to recover by way of damages or otherwise against either of the parties hereto
- B.     This Agreement contains the entire understanding of the parties hereto and supersedes any and all oral understandings between the parties.
- C     No term or provision of this Agreement may be changed, waived, discharged or terminated except by an instrument in writing and signed by both parties to this Agreement.
- D     All words, terms and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms and phrases in the railroad industry
- E.     All Article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement
- F.     As used in this Agreement, whenever reference is made to the trains, locomotives, cars or equipment of, or in the account of, one of the parties hereto, such expression means the trains, locomotives, cars and equipment in the possession of or operated by one of the parties and includes such trains, locomotives, cars and equipment which are owned by, leased to, or in the account of such party. Whenever such locomotives, cars or equipment are owned or leased by one party to this Agreement and are in the possession or account of the other party to this Agreement, such locomotives, cars and equipment shall be considered those of the other party under this Agreement.
- G     This Agreement is the result of mutual negotiations of the parties hereto, neither of whom shall be considered the drafter for purposes of contract construction

- H. Neither party hereto may disclose the provisions of this Agreement to a third party, excluding a parent, subsidiary or affiliate company, without the written consent of the other party, except as otherwise required by law, regulation or ruling.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

CSX TRANSPORTATION, INC.

Cussie Prohm

Name

DIR PASS & JF ABMTS

Title.

CENTRAL RAILROAD OF  
INDIANAPO d/b/a CHICAGO,  
FORT WAYNE AND EASTERN

Sandra K. Franger

Sandra K. Franger  
VP-Contracts

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### **EXHIBIT III**

#### **CAPTION SUMMARY**

#### **SURFACE TRANSPORTATION BOARD**

#### **NOTICE OF EXEMPTION FINANCE DOCKET NO. 35127**

#### **CSX TRANSPORTATION, INC. – TRACKAGE RIGHTS EXEMPTION – CENTRAL RAILROAD OF INDIANAPOLIS D/B/A CHICAGO, FORT WAYNE AND EASTERN**

Central Railroad of Indianapolis d/b/a Chicago, Fort Wayne and Eastern (“Owner”) has agreed to grant limited overhead trackage rights (the “Trackage Rights”) to CSX Transportation, Inc (“User”) over Owner’s line of railroad, between milepost QF 191 28, at the west end of User’s Crestline Yard, at Crestline, OH and milepost QFS 62 85 at Spore, OH, on the Ft Wayne Line Subdivision, a total distance of approximately 15 1 miles Subject to notice from User to Owner that User intends to operate at other times or additional trains, the Trackage Rights are limited to: (i) the months between and including April through November of each calendar year and (ii) a maximum of three (3) loaded unit trains of crushed limestone and three (3) empty unit trains per week, with a maximum of sixty (60) cars per unit train The trackage rights will become effective on May 30, 2008, or the date that is 30 days from the date the Board receives this notice (to the extent it is received after May 1, 2008)

This Notice is filed under 49 C F R § 1180 2(d)(7) Petitions to revoke the exemption under 49 U S C § 10505(d) may be filed at any time The filing of a petition to revoke will not stay the transaction

**Dated:**  
**By the Board,**

**Anne K. Quinlan, Esq**  
**Acting Secretary**